

EDUCATION AND WORKFORCE DEVELOPMENT CABINET
Department of Workforce Investment
Office of Vocational Rehabilitation
(Amendment)

781 KAR 1:040. Rehabilitation technology services.

RELATES TO: KRS 151B.190, 29 U.S.C. 705(30), 723, 34 C.F.R. 361.5(b)(11), 361.42, 361.45, 361.46

STATUTORY AUTHORITY: KRS 151B.185, 151B.195

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 requires the Executive Director of the Office of Vocational Rehabilitation to promulgate administrative regulations governing the services, personnel, and administration of the State Vocational Rehabilitation Agency. This administrative regulation prescribes the requirements for the provision of rehabilitation technology services in order to distribute limited funds more equitably over the entire population of otherwise eligible individuals.

Section 1. Definitions.

(1) "Certified driver rehabilitation specialist" means a driver rehabilitation specialist who has obtained certification to provide services from the Association for Driver Rehabilitation Specialists.

(2) "Driver evaluation" means a clinical and behind-the-wheel evaluation by a certified driver rehabilitation specialist to identify an eligible individual's driver rehabilitation needs to allow that person to drive independently.

(3) "Driver rehabilitation specialist" means an individual who plans, develops, coordinates, and implements driver rehabilitation services for individuals with disabilities.

(4) "Driver training" means behind-the-wheel instruction required to teach an individual with a disability to drive with or without vehicle modifications.

(5) "Eligible individual" means an individual who has been determined by the office to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 C.F.R. 361.42.

(6) "Extended driver evaluation" means additional evaluation necessary in those cases where an individual's ability to drive cannot be determined after a driver evaluation.

(7) "Family" means spouse, children, parents, grandparents, or siblings.

(8) "Individualized plan for employment" means a written plan for a specific employment outcome as required by 34 C.F.R. 361.46.

(9) "Office" means the Office of Vocational Rehabilitation and its staff members who are authorized under state law to perform the functions of the state regarding the state plan and its supplement.

(10) "Rehabilitation technology specialist" means an individual who analyzes the needs of individuals with disabilities, assists in the selection of the appropriate assistive technology, and trains the eligible individual on how to properly use the specific equipment.

(11) "Structural addition" means any improvement to real property that would increase the square footage or footprint of the property.

Section 2. Driver Rehabilitation Technology Services.

(1) Driver rehabilitation technology services may be provided if:

(a) Personal transportation is required to meet the job goals specified on the individualized plan for employment;

(b) ~~[Other modes of transportation that would enable the eligible individual to effectively meet the vocational goal as stated in the individualized plan of employment, such as public transportation, are not available;~~

(e) The individual meets the economic need qualifications established in 781 KAR 1:030; and

(c)~~(d)~~ The individual is within a category that is presently being served in the Order of Selection as established in 781 KAR 1:030.

(2) Driver training and extended driver evaluation may be provided if:

(a) The services are recommended by a certified driver rehabilitation specialist;

(b) If vehicle modification is required, the applicant or eligible individual meets the criteria for vehicle modification, as established in Section 3 of this administrative regulation; and

(c) The applicant or eligible individual agrees to obtain additional practice as recommended by a certified driver rehabilitation specialist.

(d) The applicant or eligible individual must currently own or have access to an appropriate vehicle upon completion of driver's training.

(3) Driver rehabilitation technology services may be provided to an applicant or eligible individual who does not meet the requirements of subsection (2) of this section if the Director of Field Services~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 3. Vehicle Modification Services.

(1) Modification of a private vehicle shall be authorized if the eligible individual:

(a) Completes a driver evaluation and vehicle modification assessment by a rehabilitation technology specialist; and

(b) Obtains a vehicle modification prescription from a certified driver rehabilitation specialist.

(2) Modification of a private vehicle shall be provided on the most cost-effective vehicle necessary for the individual's personal transportation for employment, using the most cost-effective means of modification.

(3) Recoverable, nonpermanent modifications shall be provided for private vehicles if available and cost-effective.

(4) A vehicle modification shall not be performed on a vehicle other than that recommended by a certified driver rehabilitation specialist, unless:

(a) The vehicle can be modified to meet the individual's needs; and

(b) The individual assumes all costs associated with the modification of the vehicle in excess of the cost of modification of the recommended vehicle.

(5) An eligible individual shall obtain a valid Kentucky operator's license before a vehicle modification to allow the individual to drive the vehicle will be approved.

(6) A vehicle modification costing in excess of \$5,000 shall not be delivered to the eligible individual unless the eligible individual provides proof of insurance for the replacement cost of the vehicle and vehicle modifications.

(7) A vehicle modification costing in excess of \$10,000 shall not be provided unless the eligible individual:

(a) Has a vocational objective of competitive employment;

(b) Is employed, actively seeking work, or has a reasonable expectation of beginning work within six (6) months; and

(c) The Director of Field Services~~[Program Services]~~ or designee determines that the modification has a direct relationship to the employment objective and that failure to provide the

modification would prevent the successful achievement of the employment objective.

(8) Vehicle modifications in excess of \$10,000 shall not be provided on a used vehicle unless:

(a) The vehicle is no more than two (2) years old;

(b) The odometer on the vehicle reads no more than 50,000 miles; and

(c) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification.

(9) Vehicle modifications shall not be performed on a leased vehicle unless:

(a) A rehabilitation technology specialist inspects the vehicle and determines that it is appropriate for the required modification;

(b) Written permission for the specific modification is obtained from the leasing company; and

(c) Recoverable, nonpermanent equipment is used.

(10) The eligible individual shall be solely responsible for providing maintenance, repair, and upkeep to the modifications as specified in any relevant warranties.

(11) The eligible individual shall pay for any maintenance, service, and repairs for modifications not under warranty except as provided in Section 4(2) of this administrative regulation.

Section 4. Upgrade and Repair of Vehicle Modifications.

(1) An upgrade to a vehicle modification shall not be provided unless:

(a) The upgrade is required due to a medically documented change in status or function that necessitates a change in driving equipment or vehicle chassis; and

(b) The eligible individual is employed in a competitive integrated employment setting.

(2) If the vehicle upgrade involves the purchase of a driving system, the vehicle shall be inspected by a rehabilitation technology specialist and found:

(a) To be appropriate for the proposed modification; and

(b) To meet all manufacture requirements for the proposed driving system.

(3) A repair to a vehicle modification shall be provided if:

(a) The eligible individual is currently competitively employed in an integrated setting, as defined in 34 C.F.R. 361.5(b)(11);

(b) The repair is not required as a result of the eligible individual's negligence, misuse, abuse of the equipment, or failure to provide proper maintenance of the equipment;

(c) The eligible individual provides the office with maintenance records for the vehicle and vehicle modifications; and

(d) A rehabilitation technology specialist:

1. Inspects the maintenance records of the vehicle and vehicle modifications;

2. Determines that the maintenance has met manufacturer requirements;

3. Inspects the vehicle and modifications; and

4. Determines that is reasonable to repair the modification.

(4) An upgrade or repair to a vehicle modification costing in excess of \$10,000 shall not be provided unless the Director of Field Services~~[Program Services]~~ or designee determines that failure to provide the update or repair would prevent the successful maintenance of competitive employment or would result in a significant cost savings to the office.

(5) An upgrade or repair may be provided to an eligible individual who does not meet the requirements of this section if the Director of Field Services~~[Program Services]~~ or designee determines:

(a) That documentation exists that failure to provide the services will preclude the successful completion of the individualized plan for employment; or

(b) The provision of the service would result in a substantial cost savings to the office.

Section 5. Repeat Vehicle Modifications.

- (1) Except as provided in this section, the office shall not provide more than one (1) vehicle modification per eligible individual.
- (2) The office shall provide a repeat vehicle modification if:
 - (a) The eligible individual is currently working in an integrated competitive employment setting~~[competitively employed]~~, as defined in 34 C.F.R. 361.5(b)(11);
 - (b) The eligible individual has a five (5) year work history since the last modification and has been working consistently for a minimum of two (2) years;
 - (c) The previously modified vehicle has at least 105,000 additional miles on it since the last modification;
 - (d) A rehabilitation technology specialist inspects the vehicle and modifications and recommends replacement of the vehicle or modifications;
 - (e) The eligible individual provides the office with a maintenance record for the vehicle and modifications that demonstrates that the maintenance has been provided according to manufacturer requirements;
 - (f) The eligible individual completes a driver evaluation by a rehabilitation technology specialist and obtains a vehicle modification prescription from the specialist; and
 - (g) The Director of Field ~~[Program]~~ Services or designee determines that failure to provide the repeat modification will prevent successful maintenance of competitive integrated employment or would result in a significant cost savings for the office.

Section 6. Property Modification.

- (1) Permanent, nonrecoverable modification to a private home, business, or property may be provided if:
 - (a) A qualified rehabilitation counselor determines it is essential to achieve the employment objective of the eligible individual;
 - (b) The eligible individual meets economic needs qualifications established in 781 KAR 1:030;
 - (c) A qualified rehabilitation counselor determines that failure to provide the modification will preclude the successful achievement of the employment goal;
 - (d) A property modification assessment is completed by a rehabilitation technology specialist;
 - (e) The eligible individual or family member owns the property to be modified and is current on any mortgage payments;
 - (f) The eligible individual has not received permanent, nonrecoverable modifications to a home from the office in the past; and
 - (g) The eligible individual is within a category that is presently being served in the order of selection as established in 781 KAR 1:030.
- (2) Property modifications in excess of \$30,000 or twenty (20) percent of the Property Value Administrator (PVA) assessment value of the home or property, whichever is less, shall not be provided.
- (3) Property modifications shall be limited to the most cost effective means of safely addressing the disability needs of the eligible individual as required for employment and shall:
 - (a) Be recoverable, nonpermanent modifications, if possible;
 - (b) Be cost effective;
 - (c) Provide access to one (1) entrance to and exit from the home, business, or property;
 - (d) Provide access to entrance to and exit from one (1) bathroom area and use of the facilities in that bathroom;

- (e) Provide access to entrance to and exit from one (1) bedroom area; and
- (f) Allow access to corridors necessary to access the bathroom and entrance and exit area of the property.
- (4) Property modifications shall not be provided to homes or properties purchased within the last two (2) years unless there is medical documentation to support a finding that there has been a significant change in status or function of the eligible individual that has occurred since the initial purchase of the property, and that finding could not have been anticipated when the home or property was purchased.
- (5) Property modifications shall not include structural additions to existing properties or the purchase of new property.
- (6) The office shall not restore modified property to its original condition or upgrade areas of the property not affected by the modification into compliance with current local building codes.
- (7)(a) All changes or additions to the recommendations of the rehabilitation technology specialist shall be approved, in writing by the rehabilitation technology specialist; and
- (b) The cost of all changes or additions shall be assumed by the eligible individual.
- (8) The eligible individual shall provide maintenance, repair, and upkeep to the modifications as required for relevant warranties.
- (9) The eligible individual shall be solely responsible for maintenance, service, and repairs for modifications not under warranty.
- (10) Property modifications shall be provided to an eligible individual that does not meet all the requirements of this section if the Director of Field[Program] Services or designee determines that failure to provide the modification would prevent the successful achievement of the vocational objective or would result in a significant cost savings to the office.

CORA MCNABB, Executive Director

APPROVED BY AGENCY: August 11, 2021

FILED WITH LRC: August 11, 2021 at 1:45 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on October 26, 2021, at 1:00 p.m. Eastern Time, at the Mayo-Underwood Building Hearing Room, 500 Mero Street, 1st Floor, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. on October 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

The Kentucky Office of Vocational Rehabilitation does not discriminate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation ACT of 1973, Title VII of the Civil Rights Act of 1964, and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Office will provide, upon request, reasonable accommodation including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all aspects of the meeting. If an interpreter or other auxiliary aid or service is needed, contact Susie Edwards at the address below.

CONTACT PERSON: Susie Edwards, Vocational Rehabilitation Administrator, Office of Vocational Rehabilitation, 500 Mero Street, 4th Floor, Frankfort, Kentucky 40601-1957, phone 502-782-3456, fax 502-564-6745, email SusieM.Edwards@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Susie Edwards

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes guidelines for administration of Kentucky's obligation under the Rehabilitation Act to provide vocational rehabilitation services to Kentuckians, specifically the provision of rehabilitation assistive technology services mandated by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(b) The necessity of this administrative regulation: This administrative regulation was necessary to implement provisions of Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(c) How this administrative regulation conforms to the content of the authorizing statute: This administrative regulation provides information necessary for specific guidance and operation of the state's provision of rehabilitation assistive technology services as set out in, and mandated by, Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation provides specific administrative guidance for the implementation of the state's provision of rehabilitation assistive technology services to disabled individuals as required by Sections 705(2)(C), (3), (4), (30), and 723(a)(1) of the Rehabilitation Act and regulations, 34 C.F.R. §§ 361.5(b)(49), 361.48(b).

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendments to the Administration Code are made to adapt the regulations to provide better guidance to disabled individuals and to provide for more efficient use of limited agency resources. The revisions enhance more clearly set out expectations and requirements that disabled consumers have to be eligible for rehabilitation technology for personal transportation and driver's training.

(b) The necessity of the amendment to this administrative regulation: Changes to the regulations were needed to prevent possible abuse or waste of increasingly limited resources for operation of the program. Assistive technology is a vital part of vocational rehabilitation services and the agency has found that its resources are increasingly limited for this program. The changes made to the regulation were needed to more clearly define what can be provided to each disabled consumer and when it could be provided.

(c) How the amendment conforms to the content of the authorizing statute: This amendment conforms to the authorizing statute by specifying guidance for the requirements of providing rehabilitation assistive technology services to disabled consumers.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides more specific guidance to disabled consumers on what is required to obtain vocational rehabilitation assistive technology devices, when those services can be provided, and what continuing obligations the consumer may have.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any disabled individual seeking voca-

tional rehabilitation assistive technology devices, all vocational rehabilitation staff statewide that assist disabled individuals seeking assistive technology devices.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The staff will not have any additional requirements as a result of this amendment. The individuals with a disability will have clearer expectations for receiving technology assistance related to personal vehicles and driver's training. The amendments only provide more specific guidance to clear up any ambiguities and to ensure that resources are not wasted.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There are no new costs to the individuals, staff or businesses affected.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Both staff and disabled individuals will have a better understanding of the requirements for obtaining rehabilitation assistive technology services because the amended regulations provide more specific guidance than what previously existed.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: No additional costs are expected.

(b) On a continuing basis: The proposed amendment does not result in additional costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal Rehabilitation Funds received by the Department of Vocational Rehabilitation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is no increase in fees or funding necessary to implement this amendment to the existing regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation does not establish fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all consumers.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)? Yes

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Office for Vocational Rehabilitation, Department for Workforce Investment, Education and Workforce Development Cabinet.

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS Chapter 13A, KRS 151B.180 to 151B.210, 29 U.S.C. §701 et seq., 29 U.S.C. §§ 705, 723, 34 C.F.R. 361.5, 34 C.F.R. 361.48.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? None.

(d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. The amendment of this regulation has no fiscal impact.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: